Filed 3/23/07

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re MICHAEL S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. MICHAEL S. et al., Defendants and Appellants.	G036217 (Super. Ct. No. DL017240) ORDER DENYING REHEARING AND MODIFYING OPINION; NO CHANGE IN JUDGMENT

The petition for rehearing is DENIED.

The opinion filed February 27, 2007 is hereby modified as follows:

1. On page 5 of the slip opinion, between the third and fourth full paragraphs, insert this new paragraph:

Having found authority for the mother's appeal in section 730.7's incorporation of Civil Code sections 1714.1 and 1714.3 and their incorporation, in turn, of section 904.1 of the Code of Civil Procedure, we must make one further note. Section 800 of the Welfare and Institutions Code, which expressly gives minors the right to appeal, contains no language precluding parental appeals from section 730.7 judgments,

or *limiting* such appeals to *only* minors. On its face the statute merely says a minor may appeal. No where does it say that a directly affected parent may not appeal under some *other* statute where an appeal would otherwise be appropriate.

2. On page 6 of the slip opinion, at the top of the page after the sentence ending "the order from which she appealed," add the following:

Given the natural presumption that minor children typically live with their parents, the parent was only indirectly affected. (In essence, the case involved a court order "grounding" the minor.) There was no order directly aimed at the parent's pocketbook.

3. In the next sentence at the top of page 6 of the slip opinion, the phrase "The cases that it relied on . . . . " should now read: "The cases that *Almalik S.* relied on . . . ."

4. At the top of page 6 of the slip opinion, insert the words "and cannot by any means be read to preclude parental appeals pursuant to section 730.7" between the words "under section 730.7" and the end of the sentence.

5. Delete the text of footnote 4 on page 6 of the slip opinion and in its stead substitute the following:

An examination of the pedigree of the exclusivity language from *Almalik S.* shows that no court, other than *Jeffrey M.*, has yet actually considered the specific problem of appeals from juvenile court orders when they provide for a monetary judgment against a parent. Specifically, *Almalik S.* said: "'[T]he appealability of juvenile court orders is governed, not by the Code of Civil Procedure, but by the Welfare and Institutions Code.'" (*Almalik S., supra,* 68 Cal.App.4th at p. 854.) For that language *Almalik S.* cited *In re Sarah F.* (1987) 191 Cal.App.3d 398, 402. *Sarah F.'s* statement on that page (specifically, "the appealability of juvenile court orders is governed, by not the Code of Civil Procedure, but by the Welfare and Institutions Code. (§§ 395, 800.)") was made in the context of showing what the court in *In re Joshua S.* (1986) 186 Cal.App.3d 147 had "correctly pointed out." (*Sarah F., supra,* 191 Cal.App.3d at

p. 402.) (Though the *Sarah F.* court did not provide a page reference in *Joshua S.* for its statement, the reference can be found at page 150 of the *Joshua S.* opinion, at 186 Cal.App.3d.) But the holding in neither case ruled out of the idea of parental appeals in cases where the parent would have a direct interest affected by the order and the subject matter of the order was not otherwise preempted by the Welfare and Institutions Code statute itself. In both *Sarah F.* and *Joshua S.* the parent was indeed allowed to appeal. (*Sarah F., supra*, 191 Cal.App.3d at pp. 402-404 [parent had standing to appeal a juvenile court order referring a matter for a hearing under Civil Code section 232 terminating parental rights]; (*Joshua S., supra*, 186 Cal.App.3d at p. 155 [mother allowed to appeal from dependency order also referring matter out for section 232 proceeding].)

Joshua S. cited only the two Welfare and Institutions Code appealability statutes (§§ 395 and 800), and *In re Corey* (1964) 230 Cal.App.2d 813, 821 for the idea that "the Code of Civil Procedure section [the court was referring to section 902] is inapplicable to questions surrounding the appealability of a juvenile court order." (*Joshua S., supra*, 186 Cal.App.3d at p. 150.)

In re Corey was a juvenile delinquency case, in which a minor was adjudicated a ward based on a finding he had committed robbery. While his appeal was pending from that order, the minor brought, in the trial court, a petition to set aside the not-yet-final judgment of wardship on the grounds that another person was really responsible for the robbery. The set-aside petition was denied, and the minor appealed from the order of denial — his second appeal. The county probation officer, as respondent, sought to have the second appeal dismissed because a Code of Civil Procedure only authorized appeals after final judgments, and the first judgment, not yet final, could therefore not support an appeal from the denial of the set-aside order. (*In re Corey, supra*, 230 Cal.App.2d at p. 820.) However, a parallel provision in section 800 provided for appeals from orders after judgments, omitting the "final" in the "final judgment" provision in the Code of Civil Procedure statute. (See *ibid*.) It was in the context of the conflict between the Welfare and Institutions Code statute and the Code of Civil Procedure statute that the *In re Corey* court declared that the former controlled.

(*In re Corey, supra*, 230 Cal.App.2d at p. 813.) The point was *not* the inherent exclusivity of the Welfare and Institutions Code appealability statutes. Rather, it was that those statutes trumped *conflicting* Civil Procedure statutes "under the rule that a special statute dealing expressly with a particular subject controls and takes priority over a general statute." (*Id.* at p. 821.) *In re Corey* is the end of the line of the exclusivity language on appeals.

6. On page 11 of the slip opinion, insert the following additional paragraph between the paragraph that ends with the words "only vicariously liable" and the one that begins with the words "The order making . . . .":

We should add that there is nothing in the actual text of section 730.7 providing that a parent *cannot* be released by a third party. The text merely states that a parent "shall be rebuttably presumed" to be jointly and severally liable for certain reasons. A presumption of liability, however, cannot reasonably be translated into a preclusion against any and all releases of liability. It would be a misreading of that text to say that it precludes a release of any parental liability by the victim. The rule against release of the minor's liability by the victim as articulated in *Tommy A.* was based on the text of section 730.6 and policy concerns (see *Tommy A.*, *supra*, 131 Cal.App.4th at pp. 1590-1592), not any language in section 730.7.

These modifications do not affect the judgment.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

ARONSON, J.